

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3660 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

OMPRAKASH KALLU PREMCHAND SHARMA

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL, Advocate for the Petitioner.

MR UR BHATT, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 03/07/96

ORAL JUDGEMENT

Petitioner Omprakash @ Kallu Premchand Sharma (hereinafter referred to as "the detenu"), by way of this petition under Article 226 of the Constitution of India, has challenged the order of detention dated 23-1-1996 passed by the Commissioner of Police, Baroda City, (hereinafter referred to as "the detaining authority") under section 3 (1) of the Gujarat Prevention of Anti

Social Activities Act, 1985 (hereinafter referred to as " the PASA Act").

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on four prohibition cases registered against the detenu out of which two are pending trial and two are pending at the investigation stage. Besides these criminal cases, the detaining authority has also placed reliance on the statements of three witnesses. Considering these materials, the detaining authority was of the view that the detenu is a "bootlegger " within the meaning of section 2 (b) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

This petition is capable of being disposed of on the first contention advanced by Mr.Patel .Therefore, it is not necessary to refer to and deal with the other contentions advanced by him. He contended that the cases registered against the detenu are all prohibition cases and yet to be proved against the detenu. Assuming that the allegations made in the grounds of detention are true, in that event also, at the most the detenu can be held responsible for committing breach of the law and order and under no circumstances he can be held responsible for the breach of public order. Under the circumstances, the subjective satisfaction arrived at by the detaining authority that with a view to maintaining public order the detention of the detenu is necessary is not genuine and, therefore, the impugned order of detention is illegal and void.

I find considerable substance in the submission of Mr.Patel. All the cases registered against the detenu are under the Bombay Prohibition Act . Therefore, there is no question of the breach of maintenance of public order. Even, considering the statements of the witnesses relied upon by the detaining authority, in my opinion, they are vague and general and , therefore, in absence of any cogent material against the detenu, the subjective satisfaction arrived at by the detaining authority for the purpose of passing the order of detention against the detenu is not genuine.

In the result, this petition is allowed. The

impugned order of detention dated 23-1-1996 is quashed and set aside. The detenu Omprakash @ Kallu Premchand Sharma is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

o-o-o-o-o-o

True copy